LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 20 1966
JOHN F. DAVIS, CLERK

Docket No. 475

In the

Supreme Court of the United States

OCTOBER TERM, 1966

JOHN H. KELSEY, et al.,

Appellants,

v.

PERRY H. CORBETT, et al.,

Appellees.

On Appeal from the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas

MOTION TO DISMISS OR AFFIRM

THOMAS C. WICKER, JR.,
608 American Bank Building,
New Orleans, Louisiana,

ROBERT B. COX,
P. O. Box 485,
Odessa, Texas 79760,

CONNELL ASHLEY,
P. O. Box 1552,
Odessa, Texas 79760,
Attorneys for Appellees Corbett and Roy.

WARLICK PRESS, INC.—8383 VALDINA STREET—DALLAS—327 1-6100

INDEX

	Page
STATEMENT	2
ARGUMENT:	
I. Federal questions were not properly and timely raised	13
II. No federal question was passed on, the decisions being based on adequate non-federal grounds	15
III. Any federal question is not substantial	17
CONCLUSION	18

Page

Cases:

Bissell v. City of Jeffersonville, 24 How. 298, 16 L. Ed. 664 18

Futch v. Greer, 353 S.W. 2d 896 (Tex. Civ. App.) Ref. N.R.E., Cert. denied 372 U.S. 913, 83 S. Ct. 728 14

Kennicott v. Supervisors, 83 U.S. 452, 21 L. Ed. 319 18

King v. Cron, 285 S.W. 2d 833 (Tex. Civ. App.) Ref. N.R.E., Cert. denied 352 U.S. 843, 77 S. Ct. 67 14

Murdock v. City of Memphis, 87 U.S. 590 16-17

Raley v. Ohio, 360 U.S. 423, 3 L. Ed. 2d 1344, 79 S. Ct. 1257 15

Town of Coloma v. Eaves, 92 U.S. 484, 23 L. Ed. 579 18

Statutes and Rules:

Constitution of Texas, Art. XVI, §59 14

Articles 7880-1, et seq., Vernon's Ann. Tex. Stat. 14

Article 7880-147c10, Vernon's Ann. Tex. Stat. 9

Article 7880-76, Vernon's Ann. Tex. Stat. 16

Article 7880-34, Vernon's Ann. Tex. Stat. 16

Article 9.36, Election Code of the State of Texas, Vernon's Ann. Tex. Stat. 15

H.B. 50, Acts 1959, 56th Legis., 1st called Session, p. 39, ch. 16 13-14

Rule 418, Vernon's Tex. Rules of Civ. Proc. 14

Rule 10, Rules of the Supreme Court of the United States 17

Docket No. 475

In the

Supreme Court of the United States

OCTOBER TERM, 1966

JOHN H. KELSEY, et al.,

Appellants,

v.

PERRY H. CORBETT, et al.,

Appellees.

On Appeal from the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas

MOTION TO DISMISS OR AFFIRM

To Said Honorable Court:

Appellees Perry H. Corbett and J. Folse Roy, real parties in interest, respectfully move to dismiss this appeal or affirm the judgment below on the grounds (a) that the federal questions sought to be reviewed were not timely and properly raised or preserved in the courts below; (b) that the federal questions sought to be reviewed were not expressly passed on in the courts below, the judgment rendered in the said Court of Civil Appeals being solely and

expressly based on adequate non-federal law; and (c) that if a federal question is properly before this court, it is not substantial, is the basis for no real controversy and is frivolous.

STATEMENT

The facts are so argumentative and abbreviated in Appellants' Statement of Jurisdiction that we respectfully beg this Court's indulgence if more space is taken in the factual presentation than would ordinarily be necessary. The facts in this case as here presented are without dispute in the record and are outlined chronologically as follows:

1. In this case we are concerned originally with a tract of land, some of which is mineral classified insofar as the ownership of minerals is concerned and some of which is not so classified, consisting of a total of 8,540 acres, located in Pecos County, Texas, and being located geographically in the Arrid Region of West Texas, lying north of the City of Fort Stockton, which is the County Seat of Pecos County, Texas, and which land is referred to as being two ranches, being the Santa Rosa Ranch and the Imperial Ranch (see Statement of Facts, pp. 302-309, R.... for exact legal description and exact location of property involved).

2. On April 11, 1955, a petition was filed with the County Judge and Commissioners' Court of Pecos County, Texas, covering the tracts of land involved to form a water control and improvement district, which was to be known as "Pecos County Water Control and Improvement District Number 2." The petition was filed by a corporation with a permit

to do business in Texas known as St. Michael's College Foundation, Inc. and three private individuals. It is stated in the application, and has not been disputed in the record, that these signers owned the majority interest in the property to be affected by the proposed water district (See Statement of Facts, pp. 52-81, R. ....).

3. After the Application to form the district was filed, the County Judge of Pecos County, Texas, set down the date for hearing of such application and notice thereof was duly posted of the proposed hearing for the formation of the district at the Courthouse door in Fort Stockton and elsewhere as required by law; further, such notice was duly published in the Fort Stockton newspaper, which was the only county newspaper in the county seat of Pecos County, of such proposed hearing (Statement of Facts, pp. 311-334, R. ....).

4. A hearing was held before the Commissioners' Court of Pecos County, Texas, all members thereof being present, on May 9, 1955, and at such hearing the Commissioners' Court, after a full and complete hearing, unanimously approved the creation and establishment of the district (Statement of Facts, pp. 334-345, 359 R. ....).

5. In view of the fact that the proceedings in question transpired over eleven years ago, it is worthwhile to consider the areas in question, and the views of all persons who testified at the trial of this case as to the status of the areas here concerned during the years 1955 and 1956, which was as follows:

A. The witness Paul Bleakley stated that in 1955 the Santa Rosa Ranch had a spring producing 4,500 gallons

of water a minute, had a 60 to 80 acre lake with fish in it, had cottonwood trees and a pear orchard, had a fairly complete canal system for water irrigation; that 1,500 acres were in cultivation and irrigation and that there were several wells; that the Imperial Ranch was irrigated in large part, that there were at least three producing water wells on it, that 900 or 1,000 acres were in cultivation and under irrigation, and that he thought further water well drilling operations would be very feasible and, in his words, the area would be a "flowerland". (Statement of Facts, pp. 101-130, R. ....).

B. The appellant William Penn testified that in drilling an oil well prior to the formation of the district, he hit water at approximately 2,000 feet; that the water flowed so strongly out of the well that it flowed some 10 to 12 feet above the casing into the air. (Statement of Facts, pp. 153, R. ....). It was what he termed a "big artesian well". He further testified he thought there was other water in the area in the same formation, (Statement of Facts, p. 153, R. ....); that such was good irrigation water (Statement of Facts, p. 155, R. ....); that he thought the Santa Rosa Ranch was definitely a "likely area for the development of water for irrigation purposes" (Statement of Facts, p. 156, R. ....); and that he thought the district was a feasible operation. He further testified that water was necessary for the development of the mineral estate, insofar as initial drilling was concerned, would be beneficial to the mineral estate and was also necessary for secondary recovery operations or water flooding operations. The testimony of Appellant Penn, who is a consulting geoogist and oil producer, is so beneficial to the Appellees' position that his entire testimony is respectfully referred to this Court. (Penn was the only Appellant who expressed any familiarity at all with the land in question.)

C. The Appellants' witness P. R. Schlagel, Tax Collector for Pecos County, testified that when dry land becomes irrigated land through production of water in sufficient quantities, that its value automatically in-

creases from $10.00 an acre land to $300.00 an acre land, and that it was not unusual for bonded indebtedness to be created for the purpose of constructing improvements on the property covered by a particular governmental agency, including a water district (Statement of Facts, pp. 247, 248, 233, R. ....).

D. The Appellants' witness Leslie Bowman testified that he had been County Commissioner in Pecos County since 1949, was a farmer by trade, and owned and rented farm land immediately adjacent to the areas involved. Bowman testified that he was a member of the Commissioners' Court and was present when the application to form the water district was presented to the Court. Commissioner Bowman voted in favor of the formation of the district, as did all other Commissioners (Statement of Facts, pp. 249, 250, 254, 257, 259, R. ....).

The above evidence stated by the aforementioned witnesses, all of whom were called to the stand by Appellants, was without contradiction and shows (1) that the total area in question had approximately 2,500 acres in cultivation and under irrigation; (2) that the property in question had a lake thereon between 60 and 80 acres in size, flowing wells, pumping wells and a fairly complete canal and irrigation system; (3) that the area in question had a large cotton allotment allocation during the period of 1955 and 1956; (4) that the property in question that was not in cultivation would have been increased in value from $10.00 or $12.00 land to $300.00 land if there was an adequate water supply for the entire 8,540 acres involved; (5) that water is a necessary ingredient not only for surface agricultural development, but also for mineral development and for water flooding or secondary recovery development; and (6) that

all parties considered the plan of operation feasible, beneficial and useful. It is clear from a reading of the record herein and from testimony adduced at the trial of this case that at the time of the formation and inception of the water district it was considered by all familiar with the property involved to be entirely proper and feasible.

6. The Pecos County Water Control and Improvement District Number 2 was confirmed on July 24, 1955 at a meeting of the Board of Directors, and the election for the purpose of voting upon the confirmation of the organization of the District was held on June 18, 1955 (Statement of Facts, pp. 345-349, R. ....). An order was adopted by the Water District setting a date for an exclusion of lands hearing for August 15, 1955 (Statement of Facts, pp. 349-352, R. ....). The hearing was duly held on the exclusion of lands on August 15, 1955, at which no requests for exclusion were presented by anyone (Statement of Facts, pp. 359-364, R. ....). On August 15, 1955, an election was ordered for September 24, 1955, and in such election a bond issue was duly voted on and passed, authorizing the issuance of $850,000 in bonds, of which $180,000 were issued. It is obvious from the record in this case that the various matters above referred to appeared at length in the Fort Stockton Pioneer, a newspaper published in Pecos County; that such notifications were also done by posting, as required by law, by the Sheriff of Pecos County, Texas; and that all matters were timely attended to, in proper form, and properly passed or approved by the proper authority. As a mat-

ter of fact, Appellants do not argue or suggest that elections were not held; do not argue or suggest that living people did not vote in the elections; do not argue or suggest that the votes were not properly counted and tabulated; and do not argue or suggest that the voters did not then own taxable property within the area under consideration or that the voters were not residents of Pecos County, Texas.

7. The directors' bonds for the water district were duly filed with the County Clerk of Pecos County, Texas (Statement of Facts, pp. 393-437, R. ....). On January 20, William Guyton, a noted hydrologist of Austin, Texas, and Marvin Turner Engineers of the same city, filed a detailed report with the Board of Water Engineers of the State of Texas, giving a comprehensive and detailed plan of future development of the water district with the intial bond issue to be in the amount of $180,000, to be followed by proposed later issues, and on February 3, 1956, the Board of Water Engineers of the State of Texas approved such project and the issuance of the bonds. (Statement of Facts, pp. 473, 474, R. ....).

8. On February 8, 1956, the Attorney General of Texas, John Ben Shepard, acting for his office and the State of Texas, specifically found all requirements of the law complied with in connection with the issuance of said bonds, and found that there had been strict compliance with the Constitution and laws of the State of Texas in connection therewith. In this connection, as shown on page 15 of the Statement of Jurisdiction, appearing in the second paragraph of the Opinion of the Court of Civil Appeals is the

following language: " * * * and it is conceded by all parties that all proceedings relating to the formation of such district and the approval of its bonds are on their face letter-perfect."

9. On February 9, 1956, James P. Gibson, a practicing and licensed bond attorney of Austin, Texas, certified that the bonds in question were good and merchantable, and could be freely dealt with in the channels of commerce. (Statement of Facts, p. 503, R. ....).

10. The record shows that the sum of $163,215 was received by the District for the sale of its bonds, and that it was spent as follows (Statement of Facts, pp. 105, 109, 110, 120, 121, 138, 111, 113, R. ....):

Marvin Turner Engineers (Engineering report by William F. Guyton)	$ 5,640.00
W. L. Norman dba Norman Texas Company (for handling the bond issue)	8,350.00
J. R. Johnson (for drilling the dry water well to 4,600 feet)	47,000.00
The Steck Company (for printing)	$ 247.00
Gibson, Spence & Gibson (for attorney's fees in connection with the creation of the District and the bond issuance)	2,727.00
Western Company	1,772.34
Interest and sinking fund on deposit in American National Bank	16,200.00
St. Michael's College Foundation (purchase of three artesian wells, irrigation canals, etc.)	75,000.00

Arnold and Crane purchased the bonds and sold them to Appellee Perry Corbett for $174,041.92, in cash, which was between 94% and 97% of par value, and Appellee Corbett subsequently sold them to Appellee Roy for 100% of par value, being $194,222.50 (Statement of Facts, p. 479, R. ...). It is submitted that the money and funds were properly spent, and that had the well drilled not been dry the irrigation project would have, as anticipated, been entirely feasible. After the initial well was unsuccessful no further wells were thereafter drilled. It is so obvious that it need only be casually mentioned that Appellees Corbett and Roy had no control or authority over how the money was spent, but that in fact Roy's obligation was to Appellee Corbett and Corbett's obligation and payment was to Arnold and Crane, licensed and reputable bond brokers of New Orleans, Louisiana. (Appellants have not even appealed from the order of the trial court dismissing Arnold and Crane from this suit.) In this connection, Arnold and Crane paid their consideration to Norman Texas Company who handled the placing and handling of the bond issue. In other words, the factual background shows clearly that after all State agencies had approved the bond issue as required by law and after the bond attorney had certified the validity of the bonds, the bonds were sold by the bonding agent to Arnold and Crane, who sold same to Appellee Corbett, who sold same to Appellee Roy, who presently holds the bonds, having paid full value for same without discount.

11. On May 31, 1957, a General Validating Act (Article 7880-147c10, Vernon's Ann. Tex. Stat.) was passed by

the Legislature of Texas approving and ratifying all water districts in this State and the bonds theretofore issued by such water district. This particular Validating Act would have covered the transaction now in issue in point of time, and has not been attacked by Appellants at any time.

12. On June 16, 1959, a Special Validating Act (H.B. 50) was passed by the Texas Legislature specifically confirming the water district in all things and validating all bonds issued by it. (Jur. Stat., pp. 33-36) This Special Validating Act has been attacked in this Honorable Court even though no mention thereof was made in the Opinion of the Court of Civil Appeals, which appears on pages 13 through 19 of the Statement of Jurisdiction filed herein. In this connection, there is no showing in the record herein by Appellants as to what notice was given as to such proposed bill or as to the legislative process by which this bill, or any other bill, passes through the two houses of the Texas Legislature and becomes a part of the law of Texas. Further, the debt or lien created by the passage and approval of the bonded indebtedness became in existence when the bonds were placed in the channels of commerce and were thereafter purchased for full value by Appellees herein as fully shown in the aforementioned factual statement.

It is apparent, therefore, that the creation of the Water District and the issuance of its bonds have been approved by various State agencies, including the Commissioners' Court of Pecos County, Texas, the Texas State Board of Water Engineers, the Attorney General of Texas, and the office of the State Comptroller. The validity of the bonds

was further stated in an opinion written by Attorney James Gibson, a reputable bond attorney of Austin, Texas, and that same met all legal and constitutional requirements to be valid obligations of the District, and enforceable in all things by the levy of taxes. In bringing this suit Appellants have, in effect, charged the Commissioners' Court of Pecos County, Texas, and all other State agencies above referred to, as well as the law firm of Gibson, Spence & Gibson, of ineptitude and incompetence, if not something worse. There is no question in the record but what Perry Corbett and later J. Folse Roy purchased such bonds of the District in all good faith and for a valuable consideration consisting of 100% of par value. Similarly, there is no testimony that Paul Bleakley, Brother Benildus or any other person instrumental or concerned in the creation of the District had ever met or known Appellees Corbett or Roy at any time, or that any other party to this suit other than Arnold and Crane, investment brokers, had ever known either of such Appellees Corbett or Roy up to and including the time of trial (Statement of Facts, p. 131, R. ....).

13. Appellants admit in their Statement of Jurisdiction that all of them acquired their interests after the formation of this District, and they therefore had constructive, if not actual notice of these facts. (Jur. Stat., p. 6) Appellant Edward Dickinson testified that all oil and/or gas wells drilled on the premises were drilled subsequent to 1961. (Statement of Facts, p. 8, R. ....). As testified to by J. L. Irish, an abstracter, with Elliott & Waldron Abstract Company in Fort Stockton, Texas, the abstracts prepared for

various Appellants in this case contained many documents relating to the District, such being as follows, (Statement of Facts, pp. 300, 301, 352, 353, 355):

A. Petition for Water Control & Improvement District;

B. Order Setting Petition Down for Hearing;

C. Notice of Hearing on Petition;

D. Affidavit;

E. Order Upon Hearing, Granting Petition and Appointing Directors;

F. Order Confirming Organization of District;

G. Certified Copy of Order;

H. Certified Copy of Order setting boundaries after exclusion hearing.

Likewise, the evidence is very clear that in at least some of the abstracter's certification pages at the back of such abstracts, that the tax collector, as well as the abstracters, expressly said the property was located in other taxing districts including * * * "Pecos County Water Control and Improvement District No. 2", clearly imparting notice to Appellants (Statement of Facts, pp. 387, 388, R. ....).

14. This suit was initially instituted by Appellants in the 112th Judicial District Court of Pecos County, Texas, in the year 1961, and as shown in the transcript of the pleadings a number of special defenses were pled by Appellees herein. Prior to the announcement by Appellants herein for the trial of this case, the Appellants voluntarily dismissed with prejudice any "claim or cause of action * * * based upon or in any way related to" the alleged facts that * * * "there

were no inhabitants of the supposed water district; that the district was a sham or subterfuge created for anybody's private benefit; and/or that Appellees had any actual and constructive notice of such supposed facts, even if true" (See Dismissal Order, Tr. pp. 76-77, R. ....). In other words the Appellants herein prayed (Tr. p. 17, R. ....) for a declaratory judgment in general terms, later filed an amended pleading, (Tr. p. 42, R. ....), and thereafter (Tr. p. 76, R. ....), dismissed their suit with prejudice with the exception of the declaratory judgment feature, and it was on this general pleading that Appellants then proceeded to trial. The Court is respectfully referred to the matters which were dismissed with prejudice by the Appellants herein. After the conclusion of all the evidence the Trial Court then ruled in favor of the Appellees herein, which action, as shown by the exhibits attached to Appellants' Statement of Jurisdiction, has been subsequently upheld.

ARGUMENT

I. Federal questions were not property raised.

Contrary to Appellants' assertion on page 7 of their Statement of Jurisdiction, the federal questions sought to be reviewed here were not even raised until *after* the case had been fully tried on the pleadings in the trial court. (See Plaintiff's Second Amended Original Petition, R. ....., upon which Appellants went to trial.) In paragraph 18 of Appellants' Motion for New Trial, (Tr. 124, 125 R. .....) almost as an after thought, Appellants did for the first time even mention the U. S. Constitution, and yet, even there, no mention was made of the special validating statute (H.B. 50)

Acts 1959, 56th Legis. 1st called session p. 59 ch. 16 now so vehemently attacked. Likewise, when Appellees tendered this special statute into evidence in the trial court, Appellants did make objections thereto, but *not* on any federal or U. S. Constitutional basis. (Statement of Facts, pp. 95-96; 294, R. .....). Even in their Brief of Appellants in the Court of Civil Appeals, no Point of Error was presented which contended that such H.B. 50 (Jur. Stat. Appendix F) was in any way contrary to the U. S. Constitution. Under settled Texas procedural law a contention not presented to an Appellate Court in a Point of Error is waived. *Rule 418, Tex. Rules of Civil Proc.; King v. Cron*, 285 S.W. 2d 833 (Tex. Civ. App. 1955), Ref. N.R.E., Cert. denied 352 U.S. 843, 77 S. Ct. 67; *Futch v. Greer*, 353 S.W. 2d 898 (Tex. Civ. App.) Ref. N.R.E., Cert. denied 372 U.S. 913, 83 S. Ct. 728. The most that can be said of the Brief of Appellants in this regard is that on pp. 25-26 and 72-73 thereof there is very briefly presented a contention that the creation of the water district, the issuance of its bonds, and the levy of taxes to pay the bonds constituted a taxing of private property in violation of due process of law under the Texas Constitution. Of course other statutes and Texas constitutional provisions also governed these matters; i.e., *Article XVI. §59, Texas Constitution; Articles 7880-1 et seq., Article 7880-147c10*, Vernon's Ann. Tex. Stat., the validity of none of which have been attacked in this Court or at anytime in the courts below. It is no wonder why the Court of Civil Appeals did not expressly pass upon the "validity", under the U.S. Constitution, of H.B. 50—it was not asked to. To further demonstrate

how Appellants have belatedly changed their theories in this case one need only read pp. 56-57 of the Brief of Appellants in the Court of Civil Appeals, (R. .....), where they said:

> "On these considerations, Appellants state that the attempted validating act (Defendants' Exhibit No. 2) has no effect one way or the other on the outcome of this case."

Appellants have not met this honorable Court's test that it is essential to its jurisdiction on appeal "that there be an explicit and timely insistance in the courts that a state statute, as applied, is repugnant to the federal constitution, treaties or laws". *Raley v. Ohio*, 360 U.S. 423, 3 L. Ed. 2d 1344, 79 S. Ct. 1257.

II. No federal question was passed on, the decision by the Court of Civil Appeals being based on adequate non-federal grounds.

As is clear from a reading of the opinion by the Court of Civil Appeals in this case, (Jur. Stat., Appendix A), its decision is based on the long settled Texas law (1) That Article 9.36 of the Election Code of the State of Texas, Vernon's Ann. Tex. Stat., makes valid and binding on the courts the "conclusively presumed" results of an election unless an election contest is promptly filed according to statutory law, and (2) that only the State can attack the existence of the water district after it has operated under the statutory formation proceedings, (which all parties admit are regular and letter-perfect). It should be parenthetically added that the Appellants asked the Attorney General of Texas to file such a suit for the Appellants, but he refused.

(Plaintiff's Original Petition, paragraph IX, R. .....). Of course basis (1), supra, is basic to any political entity's having elections ever become final, to insure sound and well-ordered government. Basis (2), supra, is also obviously designed to protect innocent persons who have dealt with municipal corporations which are ostensibly acting lawfully. There were also numerous other adequate state rules of law of a defensive nature which were presented by Appellees to the Court of Civil Appeals, and which would have each been a sufficient basis for its decision. That Court, however, did not pass on or discuss them, as it obviously felt the stated grounds upon which it did base its decision alone compelled the affirmance of the trial courts' decision. These additional grounds of state law, which were thoroughly briefed in the Court of Civil Appeals, (Brief of Appellees Corbett and Roy, pp. 19-36, R. .....), are as follows: (a) Statutory incontestability of bonds—Article 7880-34, Vernon's Ann. Texas Statutes; (b) No exclusion of Appellants' property from the District was sought as provided for in Article 7880-76, Vernon's Ann. Texas Statutes; (c) Appellants' suit is an unlawful collateral attack on the District and the tax levy; (d) The doctrine of Estoppel by Recital; (e) The bar of the statutes of limitations, laches and stale demand to Appellants' suit.

There was simply no federal question passed on or involved in the Court of Civil Appeals decision or opinion, and none was essential to its judgment. And, since *Murdock v.*

City of Memphis, 87 U.S. 590 (1875), this Court has refused to review state court decisions if there are independent and adequate state grounds to support its decision.

As to "question" (4) asserted by Appellants on p. 4 of their Statement of Jurisdiction, this case has absolutely nothing to do with the Internal Revenue Service or the U. S. income tax laws. To desperately go outside the record and attempt to raise, for the first time in this Court, a jurisdictional federal question relating to income tax law is not only inexcusable, it is so irrelevant to the issues of this case that it needs no answer. Even Appellants' own Notice of Appeal contains no reference to any income tax question, and Rule 10 of the rules of this honorable Court bars any consideration of such an issue, even if it were otherwise in the case, which it is not. To invite "Amicus Curiae" assistance from the Treasury Department on issues not before this Court (Jur. Stat., Appendix H) does a disservice to the Government and the judicial process. The Wall Street Journal article (Jur. Stat., Appendix G) is also totally irrelevant to the case at bar, and has nothing to do with this Court's jurisdiction or lack thereof of this case. It is unbelievable that Appellants would go so far outside the record to create a "scandal".

III. Any federal question is not substantial.

As Appellees have attempted to demonstrate herein, there is no federal question now before this honorable Court of

any kind. However, if this Court considers that there is, Appellees would point out that such is unsubstantial, is frivolous, and is contrary to the spirit of decisions of this honorable Court. As shown above, we contend, and Appellants have admitted, that the validity of H.B. 50 has "no effect one way or the other on the outcome of this case". It would seem, under Appellants' Jurisdictional Statement, that the most "relief" this Court could give Appellants would be to strike down H.B. 50 as in violation of the Fourteenth Amendment to the U. S. Constitution. Would this also invalidate the creation of the water district, the issuance of its bonds or Appellees Corbett and Roy's right to have taxes paid to pay off the bonds, of which Appellants so bitterly but unjustifiedly complain? We submit clearly not, and this is exactly what has been held by the Court of Civil Appeals, on well settled non-federal grounds. The protection of innocent municipal bond purchases has also been the policy of this honorable Court for more than 100 years. *Bissell v. City of Jeffersonville*, 24 How. 298, 16 L. Ed. 664 (1861); *Kennicott v. Supervisors*, 83 U.S. 452, 21 L. Ed. 319 (1872); *Town of Coloma v. Eaves*, 92 U.S. 484, 23 L. Ed. 579 (1876).

CONCLUSION

It is perhaps a rare case in which so many requisites of Supreme Court jurisdiction have not been met by an Appellant or Appellants. Nevertheless, we submit such in the case at bar, and for the foregoing reasons it is respectfully

submitted that this appeal should be dismissed, or the decision of the Court of Civil Appeals be affirmed, for which Appellees pray.

Respectfully submitted,

Thomas C. Wicker, Jr.

THOMAS C. WICKER, JR.
608 American Bank Building,
New Orleans, Louisiana,

ROBERT B. COX,
P. O. Box 485,
Odessa, Texas 79760,

CONNELL ASHLEY,
P. O. Box 1552,
Odessa, Texas 79760,
Attorneys for Appellees Corbett and Roy.

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing Motion to Dismiss or Affirm has been deposited in a United States mail box, with air mail postage prepaid, addressed to counsel of record of the adverse parties at their post office address as follows:

Mr. Boyd Laughlin
P. O. Box 670
Midland, Texas

Mr. F. H. Pannill
P. O. Box 670
Midland, Texas

Thomas C. Wicker, Jr.

Thomas C. Wicker, Jr.